

APR 07 2006

LAW OFFICES OF  
**FAY KAPLUN & MARCIN, LLP**  
INTELLECTUAL PROPERTY LAW150 BROADWAY, SUITE 702  
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**FROM** : Oleg F. Kaplun, Esq. (Reg. No. 45,559) of Fay Kaplun & Marcin, LLP )

**DATE** : April 7, 2006

**SUBJECT** : U.S. Patent Appln. Serial No. 09/978,114  
for *Melodic Alerts for Communications Devices*  
Phillips Ref.: B 034221

**NUMBER OF PAGES INCLUDING COVER :** 16

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Attorney Docket No. P-634221

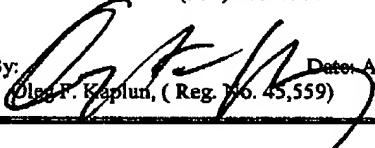
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Jones et al.  
Serial No. : 09/978,114  
Filing Date : October 15, 2001  
For : Melodic Alerts for Communications Devices  
Group Art Unit: : 2681  
Examiner : David Q. Nguyen

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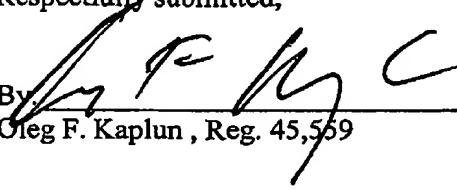
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By:  Date: April 7, 2006  
Oleg F. Kaplun, (Reg. No. 45,559)

TRANSMITTAL

In support to the Notice of Appeal filed April 4, 2006, transmitted herewith please find an Appeal Brief for filing in the above-identified application. Please charge the Credit Card of Fay Kaplun & Marcin, LLP in the amount of \$500.00 (PTO-Form 2038 is enclosed herewith). The Commissioner is hereby authorized to charge the Deposit Account of Fay Kaplun & Marcin, LLP NO. 50-1492 for any additional required fees. A copy of this paper is enclosed for that purpose.

Respectfully submitted,

By:   
Oleg F. Kaplun, Reg. 45,559

Dated: April 7, 2006

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Attorney Docket No. B-034221

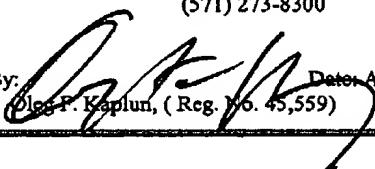
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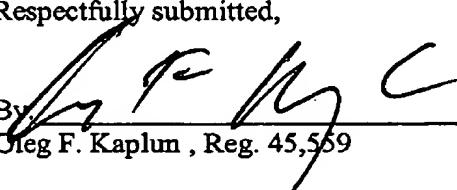
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Respectfully submitted,

By:   
Oleg F. Kaplun, Reg. 45,559

Dated: April 7, 2006

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Serial No.: 09/978,114  
Group Art Unit: 2681  
Attorney Docket No.: B-034221IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: )  
 )  
 Richard Jones et al. )  
 )  
 Serial No.: 09/978,114 ) Group Art Unit: 2681  
 )  
 Filed: October 15, 2001 ) Examiner: David Q. Nguyen  
 )  
 For: MELODIC ALERTS FOR ) Board of Patent Appeals and  
 COMMUNICATIONS DEVICES ) Interferences  
 )

Mail Stop: Appeal Brief - Patents  
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 P.O. Box 1450  
 Alexandria, VA 22313-1450

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

In support of the Notice of Appeal filed on April 4, 2006, and pursuant to 37 C.F.R. § 41.37, Appellants present their appeal brief in the above-captioned application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 20-36 in the final Office Action dated December 6, 2005. The appealed claims are set forth in the attached Claims Appendix.

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Group Art Unit: 2681  
Attorney Docket No.: B 034221

1. Real Party in Interest

This application is assigned to U.S. Philips Corporation, the real party in interest.

2. Related Appeals and Interferences

There are no other appeals or interferences which would directly affect, be directly affected, or have a bearing on the instant appeal.

3. Status of the Claims

Claims 20-36 have been rejected in the final Office Action. The final rejection of claims 20-36 are being appealed.

4. Status of Amendments

All amendments submitted by Appellants have been entered.

5. Summary of Claimed Subject Matter

The present invention, recited in an independent claim 20, relates to a communication device such as selective call receivers, for example, radio pagers, cellular or cordless telephones or corded telephones. Specifically, the present invention describes a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal. (See Specification, p. 3, l. 31 – p. 4, l. 12). The present invention also describes a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message by said receiver. (See Specification, p. 4, ll. 20-26).

The present invention, recited in an independent claim 23, also relates to a method of operating a communication device in alerting a user of the communication device of an incoming message. Specifically, the present invention describes receiving the incoming message excluding at least one of a melody identification signal and a melody signal. (See Specification, p. 3, l. 31 – p. 4, l. 12). The present invention also describes composing a melody corresponding to the incoming message subsequent to a reception of the incoming message. (See Specification, p. 4, ll. 20-26).

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The present invention, recited in an independent claim 25, also relates to a communication device such as selective call receivers, for example, radio pagers, cellular or cordless telephones or corded telephones. Specifically, the present invention describes a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal. (See Specification, p. 3, l. 31 – p. 4, l. 12). The present invention also describes a processor operable to control a display of the incoming message and a transformation of the incoming message into a melody subsequent to a reception of the message by said receiver. (See Specification, p. 4, ll. 20-26).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 20, 23 and 25 are unpatentable under 35 U.S.C. § 102(b) as anticipated over U.S. Patent No. 6,070,053 to Yamashita (the “Yamashita patent”).

II. Whether claims 21-22, 24, 26-29, 31-32, and 34-35 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,070,053 to Yamashita (the “Yamashita patent”) in view of U.S. Patent No. 6,075,998 to Morishima (the “Morishima patent”).

III. Whether claims 30, 33, and 36 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,070,053 to Yamashita (the “Yamashita patent”) in view of U.S. Patent No. 6,075,998 to Morishima (the “Morishima patent”) and further in view of in view of U.S. Patent No. 6,064,666 to Willner et al. (the “Willner patent”).

7. Argument

I. The Rejection of Claims 20, 23, and 25 Under 35 U.S.C. § 102(b) as Being Anticipated Over U.S. Patent No. 6,070,053 to Yamashita Should Be Reversed.

A. The Examiner's Rejection

In the final Office Action, the Examiner rejected claims 20, 23, and 25 under 35 U.S.C. § 102(b) as being unpatentable over the Yamashita patent. (See 12/6/05 *Office Action*, p. 2, ll. 21-22).

The Yamashita patent discloses an inputting of music data in a calling signal after an inclusion of an identification number code and message data. (See Yamashita, col. 4, ll. 29-

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46). If the identification number code that is appended to the selective calling signal coincides with the identification number stored in a memory section, a message receiving section receives the received message in the selective calling signal, and transfers the received message to a music data receiving section. (See Id., col. 4, ll. 50-55). A speaker is driven by a driver to perform an operation for calling notification using a preset sound that is stored beforehand in the memory section. (See Id., col. 4, ll. 53-66).

B. The Cited Patent Does Not Disclose a Processor that Composes a Melody Corresponding to the Incoming Message Subsequent to a Reception of the Incoming Message by Said Receiver as Recited in Claim 20.

The Examiner asserts that the Yamashita patent discusses the processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message. (See 12/6/2005 Office Action, p. 3, ll. 5-6). Since the Yamashita patent describes a calling operation and the use of a memory to access previously inputted music data that is associated with a message through the use of an identification and not with a composing operation that composes a melody subsequent to a reception of a message, the Examiner's claim is unfounded.

As discussed above in the Summary of Claimed Subject Matter, the processor *composes* a melody corresponding to an incoming message subsequent to receiving the incoming message by the receiver when the incoming message does not include either a melody identification signal or a melody signal. On the other hand, the Yamashita patent specifically does not compose melodies but requires a user to input music data after inputting an identification number code and a message data so that a calling operation can access a memory to retrieve such melody. The Examiner points to a disclosure in the Yamashita patent that the Examiner alleges to teach the composition of a melody when there is no identification number code or melody. (See 12/6/2005 Office Action, p. 3, ll. 5-6). However, even in this case, the Yamashita patent performs the calling operation as normal. (See Yamashita, col. 4, ll. 55-59). Specifically, if the data is not included in the message, the "speaker 7 is driven by driver 6 to perform an operation for calling notification using a preset sound that is stored beforehand in memory section 5." (Id. at col. 4, ll. 63-66). In other words, whether there is music data or not

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in the message, Yamashita discloses that a melody is recalled from memory, *i.e.*, there is no composing of a melody.

In contrast, claim 20 recites “a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal” and “a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message by said receiver.” The processor of claim 20 composes a melody that corresponds to the message whether or not the message includes a melody identification signal or a melody signal. The present application discloses an exemplary embodiment of such composition of a melody. (See Specification, p. 4, l. 27 – p. 5, l. 18). Thus, the Yamashita patent does not disclose a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message by said receiver, as recited in claim 20.

Thus, for at least these reasons, it is respectfully submitted that the Yamashita patent does not teach or disclose “a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message by said receiver,” as recited in claim 20.

Independent claim 23 recites substantially the same limitation as claim 20, including “compose a melody corresponding to the incoming message subsequent to a reception of the incoming message.” Independent claim 25 recites substantially the same limitation as claim 20, including “a transformation of the incoming message into a melody subsequent to a reception of the message by said receiver.” Thus, it is respectfully submitted that these claims are also not taught or disclosed by the Yamashita patent.

II. The Rejection of Claims 21-22, 24, 26-29, 31-32 and 34-35 Under 35 U.S.C. § 103(a) as Being Obvious Over U.S. Patent No. 6,070,053 to Yamashita in View of U.S. Patent No. 6,075,998 to Morishima Should Be Reversed.

A. The Examiner's Rejection

In the final Office Action, the Examiner rejected claims 21-22, 24, 26-29, 31-32 and 34-35 under 35 U.S.C. § 103(a) as being unpatentable over the Yamashita patent in view of the Morishima patent. (See 12/6/05 *Office Action*, p. 3, ll. 20-22). The Yamashita patent was discussed above.

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The Morishima patent discloses recognizing in a message information with reference to an identification symbol that is memorized in the ID-ROM. (See Morishima, col. 4, ll. 22-24). A scale map preliminarily memorizes a plurality of musical tone information data each of which is composed of tone name information comprising a tone name of each musical tone and a tone name frequency or an oscillation frequency of the tone name. (See *Id.*, col. 4, ll. 1-6). The production of a melody is thus accomplished by recalling in the memory of already stored musical tone information data. (See *Id.*, col. 4, ll. 38-47).

B. The Cited Patent Does Not Disclose a Processor that Composes a Melody Corresponding to the Incoming Message Subsequent to a Reception of the Incoming Message by Said Receiver as Recited in Claim 20.

Claims 21-22 and 31-32 depend from independent claim 20. Claims 24 and 34-35 depend from independent claim 23. Claims 26-27 and 28-29 depend from independent claim 25. Therefore, dependent claims 21-22, 24, 26-29, 31-32, and 34-35 include all of the elements and limitations of their respective independent claim. The deficiencies of the Yamashita patent were described above. The Morishima patent does not cure these deficiencies of the Yamashita patent. Thus, it is respectfully submitted that neither the Yamashita patent nor the Morishima patent, either alone or in combination, disclose or suggest creating a melody corresponding to an incoming message subsequent to a reception of the incoming message by a receiver, whether the creating is composing or transforming, as recited in claims 20, 23, and 25.

III. The Rejection of Claims 30, 33, and 36 Under 35 U.S.C. § 103(a) as Being Obvious Over U.S. Patent No. 6,070,053 to Yamashita in View of U.S. Patent No. 6,075,998 to Morishima in View of U.S. Patent No. 6064666 to Willner Should Be Reversed.

A. The Examiner's Rejection

In the final Office Action, the Examiner rejected claims 30, 33, and 36 under 35 U.S.C. § 103(a) as being unpatentable over the Yamashita patent in view of the Morishima patent in view of the Willner patent. (See 12/6/05 *Office Action*, p. 4, ll. 15-17). The Yamashita and Morishima patents were discussed above.

The Willner patent discloses an apparatus, method and architecture for a service

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network with cross service association and domain mapping. (See Willner, col. 8, ll. 19-21). Nowhere in the patent are musical tones discussed, let alone creation of melodies after receiving a message by a receiver.

B. The Cited Patent Does Not Disclose a Processor that Composes a Melody Corresponding to the Incoming Message Subsequent to a Reception of the Incoming Message by Said Receiver as Recited in Claim 20.

Claim 33 depends from independent claim 20. Claim 36 depends from independent claim 23. Claim 30 depends from independent claim 25. Therefore, dependent claims 30, 33, and 36 include all of the elements and limitations of their respective independent claim. The deficiencies of the Yamashita and Morishima patents were described above. The Willner patent does not cure these deficiencies. Thus, it is respectfully submitted that neither the Yamashita patent nor the Morishima patent nor the Willner patent, either alone or in combination, disclose or suggest creating a melody corresponding to an incoming message subsequent to a reception of the incoming message by a receiver, whether the creating is composing or transforming, as recited in claims 20, 23, and 25.

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8. Conclusion

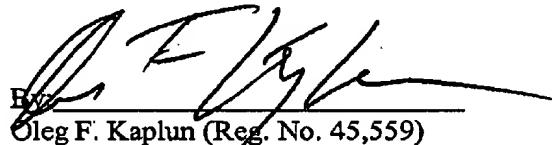
For the reasons set forth above, Appellants respectfully request that the Board reverse the final rejection of the claims by the Examiner under 35 U.S.C. § 102(b) and under 35 U.S.C. § 103(a), and indicate that claims 20-36 are allowable.

Please direct all future correspondence to:

Larry Liberchuk, Esq.  
Senior IP Counsel

Philips Intellectual Property & Standards  
P.O. Box 3001  
Briarcliff Manor, NY 10510-8001  
Phone: (914) 333-9602  
Fax: (914) 332-0615  
Email: larry.liberchuk@philips.com

Respectfully submitted,

  
By \_\_\_\_\_  
Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP  
150 Broadway, Suite 702  
New York, NY 10038  
Tel: (212) 619-6000  
Fax: (212) 619-0276

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### CLAIMS APPENDIX

20. A communication device, comprising:
  - a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal; and
  - a processor operable to compose a melody corresponding to the incoming message subsequent to a reception of the incoming message by said receiver.
21. The communication device of claim 20, wherein said processor is further operable to divide the incoming message into a plurality of fields to thereby compose the melody.
22. The communication device of claim 21, wherein the plurality of fields includes a tempo field, a repetitive play field, and at least one note field.
23. A method of operating a communication device in alerting a user of the communication device of an incoming message, said method comprising:
  - receiving the incoming message excluding at least one of a melody identification signal and a melody signal; and
  - compose a melody corresponding to the incoming message subsequent to a reception of the incoming message.
24. The communication device of claim 23,
  - dividing the incoming message into a plurality of fields to thereby compose the melody.
25. A communication device, comprising:
  - a receiver operable to receive an incoming message excluding at least one of a melody identification signal and a melody signal; and
  - a processor operable to control a display of the incoming message and a transformation of the incoming message into a melody subsequent to a reception of the message by said receiver.

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26. The communication device of claim 25, wherein said processor is further operable to divide the incoming message into a plurality of fields to thereby transform the message into the melody.
27. The communication device of claim 26, wherein the plurality of fields includes a tempo field, a repetitive play field, and at least one note field.
28. The communication device of claim 25, wherein the incoming message is a numeric message.
29. The communication device of claim 25, wherein the incoming message is an alphanumeric message.
30. The communication device of claim 25, wherein the incoming message is a voice mail message.
31. The communication device of claim 20, wherein the incoming message is a numeric message.
32. The communication device of claim 20, wherein the incoming message is an alphanumeric message.
33. The communication device of claim 20, wherein the incoming message is a voice mail message.
34. The method of claim 23, wherein the incoming message is a numeric message.
35. The method of claim 23, wherein the incoming message is an alphanumeric message.
36. The method of claim 23, wherein the incoming message is a voice mail message.

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**EVIDENCE APPENDIX**

No evidence has been entered or relied upon in the present appeal.

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**RELATED PROCEEDING APPENDIX**

No decisions have been rendered regarding the present appeal or any proceedings related thereto.